

Notice of Allowability

Application No.

09/463,209

Examiner

Juliet C. Switzer

Applicant(s)

BERGHOF ET AL.

Art Unit

1634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to after-final amendment received 7/5/05.
2. ☒ The allowed claim(s) is/are 82,83 and 85-94.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
- ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
- ☐ Examiner's Amendment/Comment
- ☒ Examiner's Statement of Reasons for Allowance
- ☐ Other _____


JULIET C. SWITZER
PRIMARY EXAMINER

DETAILED ACTION

REASONS FOR ALLOWANCE

1. The following is an examiner's statement of reasons for allowance:

The prior art does not teach or suggest the isolated nucleic acid molecules of the claimed invention. Regarding claim 82, the amendments to the claims overcome all outstanding rejections. No further 103 rejections were set forth because although the prior art teaches nucleic acids comprising these regions the prior art does not teach or suggest these particular fragments which consist of fragments of SEQ ID NO: 1. For example, US 6593114 provides sequences from *S. aureus*. Turning SEQ ID NO: 5118 from that application, this fifty nucleotide fragment comprises nucleotides 105-126 of instant SEQ ID NO: 1. Claim 1 is free of this reference because instant SEQ ID NO: 5118 taught by Kunsch et al. is not a fragment of SEQ ID NO: 1, that is it does not "consist" of at least fifteen successive nucleotides of instant SEQ ID NO: 1. Further, the fragments recited in instant claim 1, embodiments of which include instant SEQ ID NO: 1, SEQ ID NO: 2, SEQ ID NO: 3, and SEQ ID NO: 4, are free of the prior art in view of the unexpected property of the specifically recited regions as discussed in the specification on page 15 which states "The sequence comparisons revealed that the sequences of the different species have a high degree of homology in that region. Three regions having high sequence variability can, however, be detected, namely from nucleotide positions 64 to 73, 110 to 121, and 127 to 156 (p. 15, lines 2-7)." These regions having high variability are required to be part of the claims, and exemplified to be useful in an assay that detects *S. aureus* but not other *Staphylococcus* species or a variety of other tested bacteria (see Table 1, pages 18-21). The prior art does not teach or suggest SEQ ID NO: 1 in its entirety.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Juliet C Switzer whose telephone number is (571) 272-0753. The examiner can normally be reached on Monday through Wednesday, from 9:00 AM until 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, W. Gary Jones can be reached by calling (571) 272-0745.

The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-8300. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-0507.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the

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problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

A handwritten signature in black ink, reading "Juliet C. Switzer". The signature is fluid and cursive, with the first name "Juliet" being more prominent and the last name "Switzer" following in a similar style.

Juliet C. Switzer
Primary Examiner
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July 25, 2005